

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
OCTOBER 20, 2020**

ITEM 4

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO ENTER INTO A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION (USBR) UNDER WHICH THE STATE WATER BOARD WILL BE REIMBURSED FOR ADMINISTERING THE WATER RIGHTS OF THE USBR

DISCUSSION

USBR holds extensive water rights in California, but as a federal agency does not pay fees to the State of California. Instead, for many years, the USBR has negotiated a separate agreement with the State Water Resources Control Board (State Water Board) to reimburse the State Water Board, on an hourly basis, for a portion of the costs to administer water rights held by USBR. The existing contract, Contract R17PC00077, was executed July 1, 2017, and expired on June 30, 2020.

The Legislature has directed the State Water Board's water right program to be funded, in part, from regulatory fees deposited in the Water Rights Fund in the state treasury. Since first adopting a revised water right fee schedule in 2003, the State Water Board has assessed an annual water right fee to each holder of a water right permit or license based upon the authorized diversion amount in acre-feet of that permit or license. Under Water Code sections 1540 and 1560, however, if the State Water Board determines that a fee payer such as USBR is likely to decline to pay a fee or expense based on a claim of sovereign immunity, then the State Water Board may take any of several actions, including allocating the fees due to that fee payer's water supply contractors. The State Water Board has determined that the USBR was and is unlikely to pay its fees and the State Water Board passed the USBR's fees through to the USBR's contractors by prorating the USBR's fees for USBR projects among the contractors for each project. State Water Board staff believes that USBR is unlikely to pay any water right fees for the fiscal years during the proposed contract term.

Activities covered by annual permit and license fees include most of the costs of processing petitions or other requests involving oversight or proposed modifications of permits and licenses. The filing fees for actions such as processing proposed changes in point of diversion, place of use, or purpose of use under a permit or license cover only a portion of the costs. The annual permit and license fees assessed are based, in part, on the annual amount the Legislature directs be funded from regulatory fees. Annual permit and license fees are not a function of the State Water Board's reimbursement or cost recovery authorization. Therefore, in order to avoid "double

billing,” the State Water Board has not sought reimbursement from the USBR to the extent that activities involving review of USBR’s water rights are intended to be covered by the annual permit and license fees passed through to USBR’s contractors. In recognition of the situation, the State Water Board only charges the time spent handling a petition or application against the current USBR contract up to the amount of the one-time filing fee. To the extent that time spent on handling the matter exceeds the one-time fee, and the petitions involve permits or licenses for which the permit and license fees are being passed through to USBR contractors, the State Water Board will not charge USBR for this work. Instead, all fee payers of the annual permit and license fees pay for this additional water rights administration cost. For petitions involving permits and licenses for which no permit or license fees are passed through to USBR contractors, the State Water Board will continue to charge USBR for all time spent on handling the petition, without regard to what the petition fee would be under the State Water Board’s fee regulations.

USBR, in consultation with the State Water Board, has determined the need to execute a new contract to replace Contract R17PC00077 to reimburse the State Water Board’s staff costs of administering USBR’s water rights.

POLICY ISSUE

Should the State Water Board authorize the Executive Director to execute a contract for a total amount not to exceed \$223,000 per fiscal year for a duration not to exceed five years to administer the water rights of USBR.

FISCAL IMPACT

None. This contract will grant the Executive Director the contract authority to make and manage payments from the Water Rights Fund and pursue cost recovery in order to ensure the funds budgeted for this purpose remain in the Water Rights Fund.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.